

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

COUNTRY INNS & SUITES BY
CARLSON, INC., a Minnesota
corporation,

Plaintiff,

VS.

KUSA HOTELS I, LLC, a Delaware limited liability company; KUSA HOTELS M, LLC, a Delaware limited liability company; MIN DUK CHUNG, a Georgia resident; and IN ME CHUNG, a Georgia resident,

Defendants.

CASE NO. 15-cv-03316 (DSD-JSM)

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER FOR ENTRY OF
DEFAULT JUDGMENT AND AWARD OF
ATTORNEYS' FEES AND COSTS AGAINST
DEFENDANTS**

The above-entitled matter came on before the Court upon Plaintiff Country Inns & Suites By Carlson, Inc.'s ("Country") motion for entry of default judgment against Defendants KUSA Hotels I, LLC, KUSA Hotels M, LLC, Min Duk Chung, and In Me Chung ("Defendants") [Doc. 13] and request for an award of attorneys' fees and costs under Rule 55 of the Federal Rules of Civil Procedure. The Court, having carefully reviewed Country's motion and all of the files, pleadings and proceedings herein, makes the following FINDINGS OF FACT, CONCLUSIONS OF LAW, and ORDER FOR JUDGMENT:

FINDINGS OF FACT

A. Parties

1. Country is a corporation organized under the laws of the state of Minnesota with its principal place of business located at 701 Carlson Parkway, Minnetonka, Minnesota.

2. Country is the franchisor of the Country Inn & Suites By Carlson® hotel system. Country Inn & Suites By Carlson® System Hotels (“Country Inn & Suites System Hotels”) operate under license agreements with Country.

3. Defendant KUSA Hotels I, LLC (“KUSA I”) is a limited liability company organized under the laws of the state of Delaware with its last known principal place of business located at 1848 LeGrand Circle, Lawrenceville, Georgia 30043.

4. Defendant KUSA Hotels M, LLC (“KUSA M”) is a limited liability company organized under the laws of the state of Delaware with its principal place of business located at 1848 LeGrand Circle, Lawrenceville, Georgia 30043.

5. Defendant Min Duk Chung is a resident and citizen of the state of Georgia who resides at 1848 LeGrand Circle, Lawrenceville, Georgia 30043. Min Duk Chung owns 50% of KUSA I and 100% of KUSA M.

6. Defendant In Me Chung is a resident and citizen of the state of Georgia who resides at 1848 LeGrand Circle, Lawrenceville, Georgia 30043 and owns 50% of KUSA I.

B. The COUNTRY INN & SUITES BY CARLSON® License Agreement and Personal Guaranty

7. Country and Defendants Min Duk Chung and In Me Chung entered into a License Agreement with an effective date of May 18, 2007, as amended (the “License Agreement”), granting the Chungs the right to own and operate a guest lodging facility located at 5100 West Fayetteville Road, College Park, Georgia 30349 (hereinafter the “Hotel”) until April 2028.

8. As part of the License Agreement the Chungs each entered into a Personal Guaranty pursuant to which they individually guaranteed to Country that they would make full and prompt payment to Country of all fees, charges, payments, and amounts due or payable to Country and its affiliates that arise out of or relate to the License Agreement, including all interest.

9. Shortly after the License Agreement was executed, the Chungs transferred all right, title, obligations and interest in the License Agreement to Defendants KUSA I and KUSA M. As part of the transfer, the Chungs agreed that they would remain personally liable for all duties and obligations under the License Agreement and Personal Guaranty, and that any such liability would continue through the remaining term of the License Agreement.

10. In May 2008, KUSA M assigned all of its right, title, obligations and interest in the License Agreement to KUSA I. As part of the transfer, KUSA M agreed to remain liable for all amounts due and owing under the License Agreement. In addition,

the Chungs reaffirmed their obligations under the Personal Guaranty and agreed to continue to guarantee KUSA I's obligations under the License Agreement.

11. By mutual agreement, Country and KUSA I entered into a written Termination Agreement, with an effective date of August 26, 2014, pursuant to which KUSA I's rights under the License Agreement were terminated on that same date ("Termination Date") so that KUSA I could sell the Hotel to a third-party that intended to operate the Hotel as a Country Inn & Suites By Carlson® hotel.

12. Pursuant to paragraph 4 of the Termination Agreement, KUSA I agreed, among other things, that it would pay Country an agreed upon amount (consisting of past due Royalty Fees, Marketing Fees, Reservation Fees, and related fees) within 30 days of the Termination Date.

13. Defendants have failed to pay the amount due to Country under the terms of the License Agreement, Termination Agreement and Personal Guaranty.

14. Defendants owe Country a total of \$113,576.88 for past due fees, plus costs, disbursement, interest and attorneys' fees.

C. Defendants Failed to Answer or Otherwise Respond to the Complaint

15. Country commenced this action by filing its Complaint on August 18, 2015.
[Docket No. 1.]

16. Country served Defendant KUSA Hotels I, LLC with the Summons and Complaint on August 25, 2015, in accordance with all applicable Federal Rules of Civil Procedure. [Docket No. 6.]

17. Country served Defendant In Me Chung with the Summons and Complaint on September 28, 2015, in accordance with all applicable Federal Rules of Civil Procedure. [Docket No. 9.]

18. Country served Defendants KUSA Hotels M, LLC and Defendant Min Duk Chung with the Summons and Complaint on September 29, 2015, in accordance with all applicable Federal Rules of Civil Procedure. [Docket Nos. 7-8.]

19. The time allowed by law, as provided for under the Federal Rules of Civil Procedure, for Defendants to Answer the Complaint in this action has elapsed, and no Answer or other pleading has been received by or served upon Country or its attorneys.

20. The Clerk of Court entered a default against Defendants on February 5, 2016.

21. Defendants Min Duk Chung and In Me Chung were not at the time of the commencement of this action, nor for three months prior thereto, in the military service of the United States. Defendants Min Duk Chung and In Me Chung are over the age of 18.

D. Country is Entitled to Its Attorneys' Fees and Costs

22. Pursuant to Article 25.13 of the License Agreement, paragraph 11 of the Termination Agreement, and the Personal Guaranty, Defendants are required to pay Country its reasonable attorneys' fees and costs incurred in enforcing the provisions of the License Agreement and Termination Agreement.

23. The attorneys' fees and costs billed in this matter by the Gray Plant Mooty law firm are reasonable and comparable to the rates charged by law firms of similar size and stature in the Minneapolis area for attorneys with similar levels of experience. The

rates that GPM charged to Country are also less than, or the same as, those charged by other attorneys around the United States who practice nationally in the area of franchise law.

24. The Court has reviewed the original time records submitted by the law firm of Gray Plant Mooty in this matter and has determined that the work performed was for the benefit of Country and necessary for the proper representation of Country.

25. Country is entitled to an award of attorneys' fees and costs in the amount of \$7,333.81.

CONCLUSIONS OF LAW

1. Defendants have failed to answer or otherwise respond to the Complaint in accordance with the Federal Rules of Civil Procedure and have made no appearance in this case.

2. Defendants are, therefore, in default.

3. Country is entitled to past due fees in the amount of \$113,576.88, exclusive of interest.

4. Country is entitled to an award of the attorneys' fees and costs that has incurred in this matter in the amount of \$7,333.81.

5. Country is entitled to a total judgment against Defendants, jointly and severally, in the amount of \$120,910.69, exclusive of interest.

ORDER FOR JUDGMENT

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 4/22, 2016.

BY THE COURT:



Davis S. Doty
United States District Court Judge